IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2007

CORAM

THE HONOURABLE MR.JUSTICE K. VENKATARAMAN

C.R.P.(NPD) No.108 of 2006

M/s Bhagwan Chand & Co.,
rep. By its proprietor
Mr.B.Chandanmull,
Door No.47, Narayana Mudali Street,
Chennai600079. ... Petitioner / Respondent/Tenant

vs.

1.Utham Chand,
2.Ramesh Kumar,
3.Rajesh Kumar,
rep. By Estate od Shah Ganmal Nemalji,
Door No.47, Narayana Mudali Street,
Chennai600079. ... Respondents/Appellants/Petitioners landlord

Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, Act 18 of 1960 as amended by the Act 23 of 1973, to set aside the Judgment and decree dated 21.12.2005 passed in RCA No.1080 of 2003 on the file of the learned VII Judge, Court of Small Causes, Chennai, reversing the dismissal order of eviction petition, dated 18.3.2003 passed in RCOP No.2064 of 2000 on the file of the learned X Judge, Court of Small Causes, Chennai.

For appellant : Mr.P.B.Balaji

For respondents : Mr.Abudukumar Rajarathinam

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O R D E R

The Civil Revision Petition is filed against the Judgment of the learned Rent Control Appellate Authority (VII Judge, Court of Small Causes, Chennai) in R.C.A. No.1080 of 2003 dated 21.12.2005.

2. For the sake of convenience, the respondents herein will be hereinafter called as "landlords" and the petitioner as "tenant"

3. The short fact which is necessary for the disposal of the present case is as follows:

The landlord filed an eviction petition against the tenant in R.C.O.P. No.2064 of 2000 on the file of the Rent Controller (X Judge, Court of Small Causes, Chennai), for eviction on the ground of additional accommodation under Section 10(3)(c) of the Tamil Nadu Lease (Rent Control) Act. The said eviction petition has been dismissed by the above referred rent controller on 18.08.2003. Challenging the said Order, the landlord has filed an appeal in R.C.A.No.1080 of 2003 before the appellate authority (VII Judge, Court of Small Causes, Chennai). The said appeal has been allowed by the appellate authority referred to above by its order dated 21.12.2005. Challenging the same the tenant has preferred a revision before this Court in C.R.P.No.108 of 2003. This Court by an order dated 2.3.2006 set aside the Order of the appellate authority dated 21.12.2005 and allowed the revision. The landlords thereafter filed S.L.P.(C) No.8630 of 2006 before the Honourable Supreme Court. The Honourable Supreme Court has set aside the order of this Court in C.R.P.No.108 of 2003 and remitted back the matter to this Court. Thus the revision has been listed before me after the Order of remand by the Honourable Supreme Court.

4. In this back drop, let me now deal with the facts of the case which led to the filing of the eviction petition and the contention raised by the tenant in that proceeding. The landlords are the owners of the premises which consist of ground, first, second and third floors. The second and third floors are used by the landlords for their residence. The major portion of the first floor is in occupation of the landlords and they are using the same as godown. A portion of the ground floor is in possession and enjoyment of the landlords. It is the case of the landlords that they are carrying business under the name and style of

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Global Agency and Global Associates, dealing with Scientific, Surgical and Electronic instruments and educational items. Recently they have started a laboratory glassware business and also dealing in various school items, hospitals, clinical labs, research labs and sports watches etc., Their volume of business was raised as many fold and they are facing shortage of space. Further their retail business also picked up very well and they want to put up show room also in the same premises. In order to expand the business, they require a portion in the occupation of tenant for additional occupation. Since the tenant has refused to vacate the premises, they filed eviction petition against the tenant in R.C.O.P.No.2064 of 2000 before the learned rent controller referred to above.

5. The said eviction petition has been resisted by the tenant by putting forth the plea that in the ground floor number of tenants have vacated and the landlords have kept those premises under lock and key which could be used by them for their business purpose. Further the requirement of the landlords for the additional occupation has been disputed by the tenant in his counter. Further, it has been pleaded that the business which is carried on by the tenant in the petition premises ever since 1967, is the only source of income for the entire family of the tenant. The tenant has earned goodwill and it would be impossible to re establish business anywhere else. Thus, loss and hardship that would accrue on the tenant if he vacates can never be evened. On these back ground of the case the landlords have examined as PW.1 and PW.2 and filed as many as 19 documents. The tenant has examined himself as RW.1and another witness as RW.2 and marked as many as 22 documents to support his case. As said already, the rent controller has dismissed the application for eviction and the landlord filed the appeal before the appellate authority, who has allowed the same. The tenant thereafter has filed the revision before this Court. This Court while allowing the revision filed by the tenant as held as follows:

> "7. In this context,the comparative hardship is to be looked into as laid down in BADRINARAYANAN CHUNILAL BHUTADA Vs. GOVINDRAM RAMGOPAL MUNDADA ((2003) 2 SCC 320). In this decision, while dealing formulation of comparative hardship it was observed that,
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> "Factors to be considered include the direness of the need for eviction and of the need to stay in the premises,

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the conduct of the parties, their mutual relationship, prognosis as to how situation would develop in foreseeable future both in event of eviction being allowed and it is being disallowed."

This aspect may only improve the case of the revision petitioner/tenant and independent of which there is no bona fide on the part of the landlord requiring the building of 240 Sq.ft., when his actual requirement was 1000 sq.ft. and especially, when landlord filed no eviction petition against any other tenant in order to satisfy the balance of 750 sq.ft.

8. If only bona fide is found in favour of landlord, the question of comparative hardship will have to be considered inter se the parties; but in a case, where bona fide itself looking on the part of the landlord, no question of comparative hardship need be looked into and even if it is looked into, it only goes in favour of the revision petitioner/tenant as he has no other building to run the stationery business inasmuch as the other building that was shown to be used by him was as shown as godown; excepting that no building is available. Hence, I am of the view that the order passed by the Authority below has to be interfered with."

6. The landlords have preferred S.L.P. before the Honourable Apex Court and the Honourable Apex Court has remanded the matter to this Court. It will be useful to reproduce the Order of the Honourable Apex Court which is as follows;

"The landlords have taken plea, supported by the additional documents, that all other tenants had already vacated the premises in question and the bona fide need of the landlords would be satisfied with the vacation of the area of 240 Sq.fts. which is in possession of the respondent.

Accordingly the order of the High Court is set aside and the case is remitted back to the High Court for determination as to whether the need of the landlords would be met with the vacation of the premises by the respondent taking

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note of the fact that the other tenants have already vacated the tenanted premises under their occupation. The finding on the issue of comparative hardship is also set aside and the High Court would record a fresh finding thereon."

7. With this back ground let me now decide the matter in issue in the back drop of the Order of remand passed by the Honourable Apex Court. This Court while allowing the revision filed by the tenant has mainly considered that when the requirement of the landlord was more than the place which is occupied by the tenant the landlord without seeking eviction against other tenants has sought for eviction only against this tenant who is occupying 240 Sq.ft. only which is not bona fide. In view of the said finding by this Court earlier, before the Honourable Apex Court when it has been pleaded by the landlords that the other tenants in the ground floor have vacated the premises, the Honourable Apex Court thought it fit to remand the matter to this Court which could be seen from the orders of the Honourable Apex Court which reads as follows:

"The landlords have taken plea, supported by the additional documents, that all other tenants had already vacated the premises in question and the bona fide need of the landlords would be satisfied with the vacation of the area of 240 Sq.fts. which is in possession of the respondent.

Accordingly the order of the High Court is set aside and the case is remitted back to the High Court for determination as to whether the need of the landlords would be met with the vacation of the premises by the respondent taking note of the fact that the other tenants have already vacated the tenanted premises under their occupation. "

8. To find out whether the tenants in the ground floor apart from the tenant who filed the revision, have vacated the premises or not, an Advocate commissioner has been appointed, who has filed the report and by which it could be seen that except the tenant in this revision, all the tenants have vacated the premises and now it is in possession and enjoyment of the landlords. Thus, the reasoning given by this Court in an earlier occasion in this revision viz., that the landlords have not sought for eviction of the other tenants is no more in existence.

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9. At this juncture, Mr. P.B.Balaji, learned counsel appearing for the tenant contended that since the landlords have obtained vacant possession which was in occupation of other tenants and that the requirement of the landlords was only 1000 Sq.ft., the portion which is occupied by the tenant which is only 240 Sq.ft. is not bona fide. Per contra Mr. Abudukumar Rajarathinam, learned counsel appearing for the landlords contended that it is not the case of the landlords that their requirement is only 1000 sq.ft. But their case is that since the business which they are carrying on has expanded, they require the entire ground floor. Moreover, the tenant is in occupation of a portion of the premises which is facing the road and that the said portion is required for putting up show room. Further, the learned counsel submitted that it is not for the tenant to state that particular portion of the premises alone is sufficient for the landlord to run the business.

10. It is an admitted case that the landlords are dealing with scientific, surgical, industrial and sports goods apart from glasswares. Further the landlords have been recently appointed as authorised dealers to deal with glass products of Coronet Glass Works Limited. A perusal of the Assessment Order issued by the Commercial tax department and balance sheet prepared by the appellants would clearly shows that the turnover of the company has crossed more than 55 lakhs per annum. Documents that have been filed by the landlords would clearly establish that the volume of business of the two firms run by them have expanded considerably. It is natural when the business of the landlords is flourishing, they require additional space. It is for the landlords to decide whether the premises which is in occupation of the tenant, is adequate or inadequate and that it is their prerogative to decide whether they need additional place in view of the expansion of business. It is also not for the tenant to dictate the landlords and advise him that the portion which is already in occupation of the landlords is sufficient for them for their business. It has to see that now all the tenants have vacated the premises which were in their occupation and this tenant alone in occupation of 240 sq.ft. in the the ground floor. The landlords have offered sufficient and acceptable reasons while examining themselves as PW.1 and PW.2 about their expansion of business and the need of the premises under the occupation of the tenant. It cannot be said that a person or persons who are already having business which is expanding can be denied if they required the premises occupied by the tenants, if it is sought by them for expanding their business. It is the privilege of

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the landlords to chose and decide the area which they requires for their business purpose. Thus the approach of the Court should not be whether the existing premises is sufficient or not but the approach should be whether the claim is bona fide or not. Looking at any angle, considering the evidence of PW.1 and Pw.2 coupled with the documents which have been filed by them shows that the requirements of the landlords are bona fide.

11. The Honourable Apex Court has also set aside the findings of this Court on an earlier occasion with regard to the issue of comparative hardship. Hence, now let me discuss the said issue. Section 10(3)(e) specifically provides that in the case of an application under Section 10(3)(c) the controller shall reject the application if he is satisfied that the hardship which may be caused to the tenants by granting it will outweigh the advantage to the landlord. The landlords have clearly stated in their application that if eviction is ordered, the advantage to them will not outweigh the disadvantage that may be caused to the landlords. It is not the case of the tenants that they could not locate any other place to run the business which they are now running in the petition premises. It is not even his case that he has searched for a place to shift his business and he could not locate a place for the same. No doubt the tenant is doing stationery business for more than 30 years in the premises which has been let out to him. So, even if the tenant is evicted from the premises which is occupying now, he can very well get a shop portion in the nearby area. If these facts are taken into consideration there cannot be any hardship to the tenant which will outweigh the advantage to the landlords. Thus it is crystal clear that the landlords have established that comparative hardship which the tenant may face in the event of the Order of the eviction against him would not outweigh the advantage to the landlord. Thus, the landlords have fulfilled all the requirements as contemplated under Section 10(3)(c)of the Act.

12. In the result I am constrained to hold that the Order of eviction that has been passed by the lower appellate authority (learned VII Judge, Court of Small Causes, Chennai) in R.C.A.No.1080 of 2003 is liable to be confirmed and accordingly confirmed. Since the tenant is running the business in the petition premises for more than 30 years, in order to find out a suitable place he needs sufficient time to vacate and hand over the vacant possession. It will be just appropriate to grant ONE YEAR to the tenant to vacate and hand over vacant possession of the premises.

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13. In the result, the Civil Revision Petition filed by the tenant is dismissed and the order of the eviction passed by the Appellate Authority (learned VII Judge, Court of Small Causes, Chennai) made in R.C.A.1080 of 2003 dated 21.12.2005 is confirmed. As stated already, the petitioner/tenant is granted ONE YEAR time to vacate and hand over possession to the landlords from this day. It is needless to state that the tenant shall continue to pay the rents regularly without default.

Ggs

Sd/

Asst.Registrar

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Sub Asst.Registrar

1. The VII Judge, Court of Small Causes, Chennai
2. The X Judge, Court of Small Causes, Chennai
3. The Registrar Court of Small Causes, Chennai

+ one cc to Mr. P.B. Ramanujam, Advocate sr no. 46288
+ one cc to Mr. Abudukumar Rajarathinam, Advocat sr no 46524

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